

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of ) EB Docket No. 04-296  
 )  
Review of the Emergency Alert System )

## Introduction

On November 10, 2005 the Federal Communications Commission (“FCC”) released this report proposing the integration of the emergency broadcast system into digital broadcast services. This proposal is premised on the basic idea that all people in the United States of America be provided with an effective and robust national alert and warning system. This function has been, since 1994, performed by the Emergency Alert System. Consumers have adopted the availability of digital broadcast technologies at an alarming rate.

Given the dramatic increase in the amount of Americans who are, or will be receiving their broadcasts via digital technologies the FCC has recognized the need to force digital broadcasters to subscribe to the requirements of the Emergency Alert System. These digital broadcasters include radio, television, and internet technologies. The increases in digital media usage are illustrated by 2005 figures which indicate that almost 25% of

television households subscribed to Direct Broadcast Satellite services<sup>1</sup>. For radio the increase has been even more dramatic, for example in 2002 there were approximately 140,000 Satellite Digital Audios Radio subscribers, in 2005 there were more than six million<sup>2</sup>.

Currently, there is no regulation requiring digital broadcasters to subscribe to any emergency alerts. The increase in digital subscribers and lack of emergency alert compliance requirements is why the FCC wishes to adopt this proposal. The goal of the FCC is to ensure that large portions of the American public are able to receive national and/or regional public alerts and warnings<sup>3</sup>.

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<sup>1</sup> See, Review of the Emergency Alert System, Notice of Proposed Rulemaking, EB Docket No. 04-296, 19 FCC Rcd. 15775, (2004).

<sup>2</sup> Id.

<sup>3</sup> Id.

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The date is set. On December 31, 2006 analog television will no longer be the norm<sup>4</sup>. This is not only a move to modernize our countries television system, but a move to better enable those areas of the country where analog broadcasts never reached. The issue the FCC is concerned with in this matter is how to go about enforcing, if at all, the carrying of the Emergency Alert System on digital television<sup>5</sup> and digital cable<sup>6</sup>.

## I. Digital Television

In the last five to ten years our country has been witness to the enormous move from traditional analog broadcast television to digital television. In the same period of time the country has also been witness to

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<sup>4</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket No. 87-268, 12 FCC Rcd 12809, 12843-44, paras. 82-86 (1997) (*DTV Fifth Report and Order*).

<sup>5</sup> *First Report and Order*, 10 FCC Rcd at 1786, 1811. TV stations were not operating digitally at the time and therefore were not a necessary link in disseminating emergency information.

<sup>6</sup> *First Report and Order*, 10 FCC Rcd at 1788, para. 1.

dramatic changes in our society. Episodes of emergency like the September 11 attacks, constant tornadoes, and the Katrina hurricane disaster have all impacted our lives. The concern posed by the FCC is a valid one. On the one hand digital television broadcasters are not required to carry any of the emergency broadcasts<sup>7</sup>. On the other analog broadcasters are required to carry the emergency broadcasts. However, the move to digital television is a fast and massive one<sup>8</sup>. The reality is that eventually the over whelming majority of people in the country will no longer have access to analog television.

On its face this does not appear to be that much of a problem. For one, digital broadcasters do voluntarily carry emergency broadcasts as it is. However, not all do and the ones that do can technically stop at any time. Recent emergencies have reinforced the need to maintain an accessible emergency broadcast system. How else will governmental bodies like FEMA and the President have access to the people?

As it stands the digital broadcasters remain public trustees of the airways, and have a responsibility to provide their subscribers with important information<sup>9</sup>. The digital broadcasters of the country appear to challenge this proposal in a very subtle manner. They claim that since their subscribers are already provided with some access to emergency broadcasts there is not need to compel such action. However, the digital broadcasters fail to point out that

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<sup>7</sup> Id.

<sup>8</sup> Antone Gonsalvez, *The Business Technology Network, Software Market Growing Fast with Digital Television*, Vol. 2, March 12, 2006.

<sup>9</sup> See 47 U.S.C. § 336; see also *DTV Fifth Report and Order*, 12 FCC Rcd at 12810-11, para. 2.

not all of their channels, or even an adequate number of them, are currently set up to carry emergency broadcasts. This justification for their opposition to the proposal is less than convincing. The fact is that digital broadcasters should be compelled to carry emergency broadcasts. There is a greater good at stake here, the general public's well being. Currently, the possibility of nature disaster is overwhelmingly in favor of compelling the digital broadcasters. Their subscribers have a right to know what emergencies they are faced with. Digital television broadcasters should have no say in what constitutes an emergency worthy enough of interrupting their broadcast on the Tom Cruise's alien baby. This power to justify an interruption should be carried out by an entity whose interests are not based on profits. The FCC has proposed to allow digital television broadcasters the flexibility of deciding for themselves the method of implement the necessary technology. Consequently, the general public's well being should not be compromised by the cries of the multi-million dollar companies that wish to remain free to choose when and what they air.

## II. Digital Cable

The FCC proposes to enforce standard Emergency Alert System requirements on digital cable providers. The need for complete access to emergency broadcasts on digital cable is becoming more important with the increasing number of households that subscribe to digital cable. This concern was made clear when congress passed the 1992 Cable Act and stated "that

emergency information should be accessible to all television viewers, regardless of the distribution medium in use.”<sup>10</sup>

The claim that emergency information should be made available to all viewers is not some empty concern. The reality is that we as a people deserve to be provided with important information. The day when most, if not all, households will subscribe to digital cable is fast approaching. The FCC must prepare not only itself, but those companies (digital cable providers) for this inevitable outcome.

Also important to note is the fact that many digital cable providers provide internet access to their subscribers. This raises an interesting question that was not answered or addressed in Docket EB No. 04-296, whether the digital cable companies must somehow alert their internet subscribers of an emergency. In the United States, 68% of the population uses the internet<sup>11</sup>. The growth of internet usage in the United States is even more dramatic. Between 2001 and 2005 the United States saw a growth of 113.8%<sup>12</sup>. The fact is that more often than not along with digital cable comes internet access service. The average internet user spends over one hour on the internet<sup>13</sup>. During this time there is a strong possibility that an emergency may arise. The concern then is whether these people will be somehow informed of the emergency. For example, if Billy is surfing the internet, and is not watching his digitally accessed television shows, then will he be informed of a situation that may threaten his life?

I figure that if digital cable providers will already be forced to transmit

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<sup>10</sup> H.R. Rep. No. 102-628, H.R. Rep. No. 628, 102nd Cong., 2d Session 1992, at 110.

<sup>11</sup> North America Internet Usage Population, United States. April 08, 2006, <http://www.internetworldstats.com/stats2.htm>.

<sup>12</sup> Id.

<sup>13</sup> Internet Activities by Time Spent, April 08, 2006, <http://www.zonalatina.com/Zldata371.htm>

emergency alerts, then why not require them to also provide some sort of warning to their internet subscribers. The digital cable companies could provide for a pop-up to appear on the screen alerting the user that there is an emergency. The pop-up could easily provide a link to the alert or provide the alert directly. Like any other pop-up the user could close out the window or read it. This way it would be much like a television, where the viewer could turn up the volume or turn off the television set if he/she so chooses.

This seems, to me that is, to be of great importance. For one, a lot of time is spent on the internet, and many times the television is not on while doing so. Realistically, what purpose will televising an emergency alert serve if the only way to access it is to watch the television? Granted the argument that the user could easily check CNN or the BBC online for his/her updates does hold some water. However, this is not to say that the individual will even know that such a check is needed. This argument has obviously not affected the FCC's concern with digital television. A digital cable viewer could also just as easily check his or her news channel for updates, but this has not halted the FCC's efforts to force digital cable providers to carry emergency alerts. Why then should the case be any different for digital cable providers that also provide internet access?

Digital cable providers serve several purposes, and as a result of its availability also take the place of other media. Digital cable providers should not be given an option as to whether to carry an emergency alert. Their incentives are very different than the incentives of the FCC or the Government. For one, the ultimate goal of the digital cable providers is to maximize profits, not to insure the safety of their viewers. Secondly, there are



several other parties involved that directly affect the digital cable providers in their pursuit to prevent or limit the implication of this proposal. The advertisers are perhaps the main party that indirectly impact when and what is televised<sup>14</sup>. For these very reasons I believe that it is in the best interest of the general public for digital cable providers to be forced to carry emergency alerts through digital cable and the internet access service they provide.

### Conclusion

The way we communicate is changing at this very moment. New technologies are constantly being implemented, and old technologies are constantly disappearing. The United States' population is no longer faced with only natural emergencies. The threat of terror attacks and technological emergencies are more realistic. As the general population grows in its use of modern technologies so too must the laws that regulate those technologies. We as the people of this country have an interest and a need to access information that can be of great importance. We have a right to information that could prevent death or injury, to hear our President when he deems it necessary for use to give him undivided attention, and to feel secure that the entities that are responsible for securing these interests are doing their jobs.

I want to know that in the event of an emergency I will be notified of

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<sup>14</sup> By this I mean that the advertisers have an interest in guarantying that their respective commercials are not interrupted by the President or a tornado warning. I know this may sound cynical, but this is truly what I have come to expect from these companies.

such an emergency as I sit and watch my favorite television show on digital cable or on as I surf the internet. I want to feel secure that my Government is staying on top of not only technological advances, but also how these advances interplay with my safety. And finally I am glad to know that my opinion matters, even if it is some small manner.